Anti-Miscegenation Laws in Iowa, between 1839 and1959

(Anti-Miscegenation Law in 1839)

Chap. 25
AN ACT regulating marriages

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living, may be joined in marriage: *Provided always*, That male persons under twenty-one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers respectively, or in case of death or incapacity of their fathers, then of their mothers or guardians.

SEC. 2. That it shall be lawful for any ordained minister of the gospel of any religious society or congregation within this territory, who has or may hereafter obtain a license for that purpose as hereinafter provided, or for any justice of the peace in his county, or for the several religious societies agreeably to the rules and regulations of their respective churches, to join together all persons as husband and wife not prohibited by this act.

SEC. 3. That any minister of the gospel, upon producing to the clerk of the district court of any county in this territory, in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive from said clerk, a license authorizing him to solemnize marriages within this territory, so long as he shall continue a regular minister in such society or congregation.

SEC. 4. That it shall be the duty of every minister who is now or shall hereafter be licensed to solemnize marriages as aforesaid, to produce to the clerk of the district court, in every county in which he shall solemnize any marriages, his license so obtained, and the said clerk shall thereupon enter the name of such minister upon record, as a minister of the gospel, duly authorized to solemnize marriages within this territory, and shall note the county from which said license issued, for which services no charge shall be made by such clerk.

SEC. 5. That when the name of any such minister is so entered upon the record by the clerk aforesaid, such record, of the certificate thereof by the said clerk, under the seal of his office, shall be good evidence that the said minister was duly authorized to solemnize marriages.

SEC. 6. That previous to persons being joined in marriage, a license for the purpose, shall be obtained from the clerk of the district court, in the county where such female resides, agreeably to the provisions of this act: *Provided*, That the society called friends or quakers, may solemnize marriages in their public meetings without the production of such license.

SEC. 7. That the clerk of the district court as aforesaid, may inquire of the party applying for marriage license as aforesaid, upon oath of affirmation relative to the legality of such contemplated marriage,

and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons intending to marry shall be under age, the consent of the parents of guardian shall be personally given before the clerk, or certified under the hand of such parent or guardians, attested by two witnesses, one of which shall appear before the clerk and make oath of affirmation that he saw the parent or guardian whose name is annexed to such certificate subscribe, or heard him or her acknowledge the same, and the clerk is hereby authorized to issue and sign such license, and affix thereto his seal of office. The clerk shall be entitled to receive, as his fee for administering the oath of affirmation aforesaid, and granting license, recording the certificate or marriage and filing all necessary papers, the sum of one dollar and twenty-five cents; and if any clerk shall, in any other manner, issue or sign any marriage license, he shall forfeit and pay a sum not exceeding five hundred dollars, to and for the use of the party aggrieved.

SEC. 8. That a certificate of every marriage hereafter solemnized, under the hand of the justice, minister, or the clerk or keeper of the records of the societies mentioned in this act, specifying,

First. The christian names and surnames, ages, and places of residence of the parties married;
Second. The time and place of such marriage shall be transmitted to the clerk of the district court of the county where such marriage was solemnized, within three months thereafter, and be recorded by such clerk in a book to be kept by him for that purpose.

SEC. 9. Every justice, minister, or clerk, or keeper of records, in section eight mentioned, failing to transmit such certificate to the clerk of the district court of the county in due time, shall forfeit and pay fifty dollars, to and for the use of the county; and if such clerk shall neglect to record the same, he shall forfeit and pay fifty dollars, to and for the use of the county.

SEC. 10. That the record of a marriage made and kept as before prescribed by the clerk of the district court, or a copy thereof duly certified, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

SEC. 11. That if any justice or minister by this act authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding five hundred dollars, to and for the use of the county where such offence was committed, and if any person not legally authorized shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county where such offence was committed.

SEC. 12. That any fine or forfeiture arising under the provisions of this act, shall be recovered by action of debt, or by indictment, with costs of suit, in any court of record having cognizance of the same.

SEC. 13. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

SEC. 14. That all laws now in force in this territory, not embraced in the statutes of Iowa on the subject of marriages, be and the same are hereby repealed. This act to take effect and be in force from and after the first day of March next.

Approved January 6, 1840.

(Anti-Miscegenation Law in 1851)

CHAPTER 85

MARRIAGE

1463. Marriage is a civil contract requiring the consent of parties capable of entering into the other contracts, except as herein otherwise declared.
When valid.

1464. A marriage between a male person of sixteen and a female of fourteen years of age is valid, but if either party has not attained the age thus fixed the marriage is a nullity or not at the option of such party made known at any time before he or she is six months older than the age thus fixed.

1465. Previous to any within this state, a license for that purpose must be obtained from the judge of the county court wherein the marriage is to be solemnized, agreeable to the provisions of this chapter.

1466. Such license must not in any case be grated where either party is under the age necessary to render the marriage absolutely valid, nor shall it be granted where with party is a minor without the previous consent of the parent or guardian of such minor, nor where the condition of either party is such as to disqualify him for making any other civil contract.

1467. Unless the judge of the county court is acquainted with the age and condition of the parties for the marriage of whom the license is applied for, he must take the testimony of competent and disinterested witnesses on the subject.

1468. He must cause due entry of the application for the issuing of the license to be made on the records of the county court, stating that he was acquainted with the parties and knew them to be of competent age and condition, or that the requisite proof such facts was made to him by one or more witnesses (stating their name).

1469. If either party is a minor the consent of the parent or guardian must be filed in the county office, after being admitted by the said parent of guardian or proved to be genuine, and a memorandum of such facts must be also entered on the records of the county court.

1470. If the judge of the county court grants a license contrary to the provisions of the preceding sections he is guilty of a misdemeanor, and if a marriage is solemnized without such license being procured the parties so married, and al persons aiding in such marriage, are likewise guilty of a misdemeanour.

1471. The license shall not be issued until the Fee of one dollar has been paid into the county treasury and the receipt therefore filed with the judge of the county court.

1472. Marriages must be solemnized either:
First — By a justice of the peace, or judge of the county court of the county, or the mayor of the city, wherein the marriage takes place;
Second — By some judge of the supreme or district court of this state;
Third — By some officiating minister of the gospel, ordained or licensed according to the usages of his denomination.

1473. After the marriage has been solemnized, the officiating minister or magistrate shall on request give each of the parties a certificate thereof.

1474. Marriages solemnized (with the consent of parties) in any other manner than is herein prescribed are valid, but the parties themselves and all other persons aiding abetting shall forfeit to the school fund the sum of fifty dollars each.

1475. The person solemnizing marriage shall forfeit a like amount unless within ninety days after the ceremony he make return thereof to the county court.

1477. The preceding provisions, so far as they relate to the manner of solemnizing marriages, are not applicable to marriage among the members of any particular deonomication having, as such, any peculiar mode of performing that ceremony.

1478. But where any mode is thus pursued which dispenses with the services of a clergyman or magistrate, the husband is responsible for the return directed to be made to the county court and is liable to the above named penalty if the return is not made.

1479. Illegitimate children become illegitimate by the subsequent marriage of their parents.

(Anti-Miscegenation Laws in America)

... unusual Tennessee communities, where Negroes work and live in healthier surroundings than do whites, has shown that the Negro tuberculosis rate is the lower of the two. [FN27] In the case of pneumonia-influenza, evidence as to the environmental factor is less direct, but there is little scientific support for any theory of racial susceptibility. [FN28]

***477** Again, investigation reveals no proof of necessarily inferior progeny from miscegenation. Contentions of mulatto sterility [FN29] are unsupportable, for even as their proponents admit they are based on inadequate data which fails to account for such factors as mulattoes passing as white or Negroes. [FN30] More significantly, since racial commingling has already rendered the pure blooded Negro a biological rarity, [FN31] studies proving the absence of inherent medical and physical inferiorities in the modern Negro group disprove contentions of mulatto inferiority.
In addition to contentions of Negro inferiority, sociological considerations are offered as indicia of the reasonableness of anti-miscegenation statutes. Inasmuch as these considerations probably underlie both legislative and judicial attitudes towards the problem, they merit particular consideration even though their basis is societal rather than constitutional.

Proponents of the statutes argue that miscegenation occurs among the "dregs of society," and that the progeny, therefore, are likely to become a ***478** burden on the community. [FN32] But the evidence indicates that racial intermarriage now occurs most frequently in the better educated groups. [FN33] Moreover, the statutes do not purport to aim at or define the amorphous category of 'dregs," but rather apply to all racial groups.

More significant is the argument that, since miscegenous marriages expose the spouses and their progeny to social tensions, invalidation of the statutes would increase animosity towards racial minorities. [FN34] Admittedly, these tensions are acute. But the spectre of resultant community violence will materialize only when local law enforcement is lax. [FN35] To prohibit miscegenous marriage in order to avert tension perpetuates by law the very prejudices which have give rise to that tension. Such a procedure can be rationalized only by a policy which would condone total isolation of any individual from the community on the basis of prejudice alone. [FN36]

In the absence of evidence establishing a rational basis, racial restrictions on marriage infringe the Constitutional guarantee of "equal protection." ***479** The State of California, proposing in essence an application of the "separate but equal doctrine" to marriage, argued that the statute was not discriminatory since it applied equally to Caucasians and non-Caucasians. [FN37] But the California court rejected this contention, citing the opinion of the Supreme Court of the United States in Shelley v. Kraemer [FN38] that: "equal protection of the laws is not achieved through the indiscriminate imposition of inequalities." The essence of the right to marry is the right to marry whoever one wishes, regardless of race. [FN39]

Scientific and sociological evidence indicates that anti-miscegenation statutes are merely remnants of a deep-seated cultural lag. [FN40] Only an abrogation of the judicial function can explain failure to follow the California court in striking down such legislative expressions of community prejudice. [FN41]

***480** APPENDIX I

STATE ANTI-MISCEGENATION STATUTES

State and Citation

State	Citation	Marriage between Whites and the following prohibited	Effect given such marriages
Alabama	ALA. CONST., Art. 4, & 102; ALA. CODE, tit. 14, && 360-61 (1940)	Negro or descendent of a Negro to the third generation inclusive, though one ancestory of each generation was a white.	Parties each guilty of felony.
Arizona	ARIZ. CODE, c. 63, && 107-8 (1939).	Negroes, Mongolians, Malayans, Hindus, Indians.	Null and void.
Arkansas	ARK. STAT., tit. 55, && 104-05 (1947).	Negroes or Mulattoes.	Illegal and void.
California	CAL. CIVIL. CODE, & 60 (Deering 1937).	Negroes, Mongolians, Malayans, or Mulattoes.	Illegal and void.
Colorado	COLO. STAT. ANN., c. 107, && 2,3 (1935	Negroes or Mulattoes.	Absolutely void. Misdemeanor.
Delaware	REV. CODE. & 2992 (1915) amended by Sess. Laws, p. 578 (1921).	Negro or Mulatto.	Void. Misdemeanor.
Florida	FLA. CONST., Art. 16, & 24; STATS. ANN., && 741. 11-.12 (1944)	Any Negro, a person having more than or at least one-eighth Negro blood.	Utterly null and void. A felony.
Georgia	GA. CODE ANN., && 53-106, 53-9902, 53-9903 (1937)	Negroes, Indians, Malayans, Mongolians, Asiatic Indians, West Indians, or Mulattoes.	Utterly void, null and void. A felony.
Idaho	IDA. CODE. & 32-206 (1947)	Mongolians, Negroes, or Mulattoes.	Illegal and void.
Indiana	IND. STAT. ANN., & 44-104 (1933)	Persons having one-eighth or more of Negro blood.	Absolutely void without any legal proceedings. A felony.
Kentucky	REV. STAT. ANN., & 402.010 (1946)	Negro or Mulatto.	Prohibited and declared void.
Louisiana	LA. CIVIL CODE, Art. 94 (1945)	Negroes. Intermarriage of Indians and Negroes prohibited.	Have no effect and at null and void.
Maryland	Code, Art. 27, & 365 (1924); Laws, c. 60 (1935)	Negroes, or a person of Negro descent to the third generation. Malayans. Marriages of Negroes and Malayans are also prohibited.	Void. Felony.
Mississippi	MISS. CONST., Art. 14, & 263;	Negro, Mulatto, or Mongolian.	Unlawful and

	Code, tit. 4, & 459; tit. 11, && 2002, 2234, 2339 (1942)	Any person having one-eighth or more Negro or Mongolian blood.	void. Felony
Missouri	MO. REV. STAT., && 3361, 4651 (1942)	Persons having one-eighth or more Negro blood. Mongolians.	Prohibited and declared absolutely void. Felony.
Montana	MONT. REV. CODES, && 5700-5702 (1935)	Negro or a person of Negro blood or in part Negro. Chinese person and Japanese person.	Utterly null and void.
Nebraska	NEB. COMP. LAWS, && 42-103 (1943)	Persons possessed of one-eighth or more Negro, Japanese, or Chinese blood.	Void.
Nevada	NEV. COMP. LAWS, && 10197-10200 (1929)	Any person of Ethiopian or black race, Malay or brown race, or Mongolian or yellow race.	Unlawful. Misdemeanor.
North Carolina	N.C. CONST., Art. 14, & 8; STAT., & 51-3 (1943)	Negro or Indian, or person of such descent to the third generation, or a Cherokee Indian or Robeson County and a Negro, or any persons of such descents to the third generation.	Void. Felony.
North Dakota	N. DAK. CODE. && 14-0304, 0305 (1943)	Negro or person having one-eighth or more Negro blood.	Unlawful and prohibited. Felony.
Oklahoma	OKLA. STAT., tit. 43, && 12-14 (1938)	Any person of African descent.	Prohibited. Felony.
Oregon	ORE. COMP. LAWS, & 630102 (1940)	Negro or Mongolian, or any person having one-fourth or more of Negro or Mongolian blood.	Unlawful and prohibited.
South Carolina	S. CAR. CONST., Art. 3, && 33. CAR. CODE, && 8571, 1438 (1942)	Negroes, Indians, Mulattoes, or half-breeds.	Misdemeanor.
South Dakota	SO. DAK. CODE, & 14.0106 (1939).	Members of the African, Korean, Malayan, or Mongolian races.	Void. Felony.
Tennessee	TENN. CONST., Art. 11 & 14; TENN. CODE,	Negroes, Mulattoes, or persons of mixed blood descended from a Negro, to the third generation inclusive.	Prohibited and unlawful. Felony.
Texas	CIVIL STAT., & 4607 (1925)	Africans or the descendants of Africans.	Null and void. Felony.
Utah	Code, & 40-1-2 (5,6) (1943)	Negroes, Mongolians, Malayans, Mulattoes,	Void and prohibited.

		quadroons, or octoroons.	
Virginia	Code, && 5087, 5099a(5) (1942)	Colored persons. White can only marry a person with no other admixture of blood than white or one-sixteenth or less American Indian blood.	Void without any decree or legal process. Felony.
West Virginia	Code, & 4701 (1943)	Negroes.	Void. Misdemeanor.
Wyoming	REV. STAT., c. 68-118 (1931).	Negroes, Malayans, Mongolians, Mulattoes.	Illegal and void. Misdemeanor.

***482** *States Formerly Prohibiting Miscegenation*

Iowa	Omitted in 1851.
Kansas	Omitted 1857. See Laws, c. 49 (1857).
Maine	Repealed 1883. See Laws, p.16 (1883).
Massachusetts	Repealed 1840. See Acts, c. 5 (1843).
Michigan	Prior interracial marriages legalized 1883. See Comp. Laws, & 12,695 (1929).
New Mexico	Repealed 1886. See Laws, p. 90 (1886).
Ohio	Repealed 1887. See Laws, p. 34 (1887).
Rhode Island	Repealed 1881. See Acts, Jan. Sess., p. 108 (1881)
Washington	Repealed 1867. See Laws, pp. 47-48 (1867).

[FNa1]. Perez v. Lippold, 32 A.C. 757 (Cal. 1948)

[FN1] If the Negro can be placed lower in the biological order than the Caucasian, there is no difficulty in rationalizing him out of the Caucasian's social order. The Negro then receives some of the attributes of full citizenship not as rights, but as charities extended to an inferior being. 1 MYRDAL, AN AMERICAN DILEMMA 101-10 (1944)

[FN2] These are listed and discussed in MANGUM, THE LEGAL STATUS OF THE NEGRO 263- 73 (1940), and Appendix *infra*. The states still banning miscegenation are the only part of the world, outside of the Union of South Africa, with extensive prohibitions against miscegeny. Brief for Respondents, p. 8, Perez v. Lippoid, 32 A.C. 757 (CAL. 1948.

[FN3] None of these decisions reveals any examination of recent and unbiased scientific evidence. Only in one case has an anti-miscegenation statute been invalidated, Burns v. State, 48 Ala. 195, 198 (1872) (statute prohibiting minister from performing marriage of white and Negro held unconstitutional), and this case was expressly overruled by Green v. State, 58 Ala. 190 (1877).

The Supreme Court of the United States has never directly ruled on the constitutionality of these statutes, having declined the gambit in *In re* Monk's Estate, 48 Cal. App. 2d 603, 120 P. 2d 167 (1941), *app. Denied*, 317 U.S. 590 (1942) (on ground papers not filed in time), and Lee v. Monks,318 Mass. 513, 62 N.E. 2d 657 (1945), *cert. denied*, 326 U.S. 969 (1946) (both cases involving loss of Negro wife's dower rights because marriage to white man void under Arizona anti-miscegenation statute). But in Pace v. Alabama, 106 U.S. 583 (1882), the Court upheld an Alabama statute making fornication a felony for a Negro and white, but merely a misdemeanor for any other couple, on grounds that the statute was non-discriminatory and was directed at the offense rather than at any particular race or color. Id, at 585. The California court distinguished this decision on the

ground that while there is a basic right to marry, there is no right to adultery or fornicatin. See Perez v. Lippold, supra note 2, at 772.

Lower federal courts have upheld two anti-miscegenation statutes despite attacks based on the Fourteenth Amendment: Stevens v. United States, 146 F. 2d 120 (10th Cir. 1944) (marriage of Negro to deceased full-blooded Creek Indian void in Oklahoma; statute affects all parties alike); State v.